

REMARKS

At the time of the Office Action, Claims 1, 19-22, 34-47, 72-76, 86-98, and 100 were pending in the application. In the Office Action, the Examiner rejects Claims 1, 19-22, 34-47, 72-76, 86-98, and 100. Applicants respectfully traverse, and request reconsideration and allowance of all pending claims.

Claim Rejections - 35 U.S.C. § 112, first paragraph

The Examiner rejects Claim 72 under 35 U.S.C. § 112, first paragraph. The Examiner asserts that this claim fails to comply with the written description requirement. Applicants traverse this rejection and respectfully request reconsideration and allowance of Claim 72.

Applicants' Specification provides adequate support for Claim 72. A patent specification satisfies the written description requirement if it describes "the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention." MPEP § 2163 (citing *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003)). Applicants' Specification provides adequate support for "allowing the particular user to retract the at least one bid within a pre-determined time period after the announcement of the current bid," as recited in Claim 72. In particular, Applicants' Specification supports this aspect of Claim 72 in at least paragraphs 50 and 62.¹ Because Applicants' Specification satisfies the written description requirement, Applicants respectfully request reconsideration and allowance of Claim 72.

Claim Rejections - 35 U.S.C. § 112, second paragraph

The Examiner rejects Claims 36, 37, 39, 88, 89, and 91 under 35 U.S.C. § 112, second paragraph. The Examiner asserts that these claims are indefinite. Applicants traverse this rejection and respectfully request reconsideration and allowance of 36, 37, 39, 88, 89, and 91.

The rejection of Claim 36 is improper because the Examiner misapplies the definiteness standard of 35 U.S.C. § 112, second paragraph. In the Office Action, the

¹ These paragraphs of Applicants' Specification are merely cited to illustrate that the Specification adequately supports Claim 72. These paragraphs are not cited to limit Applicants' Specification to any particular embodiment.

Examiner alleges that Claim 36 is indefinite because this claim recites a conditional statement (e.g., “if”). (Office Action; page 3). In the Office Action, the Examiner asserts that, when a claim recites a conditional statement, the claim must recite an action or result that applies when the condition is false. (Office Action; page 3). This assertion is incorrect. Under 35 U.S.C. § 112, second paragraph, the proper inquiry is whether the language of the claim is such that a person of ordinary skill in the art could “interpret the metes and bounds of the claim *so as to understand how to avoid infringement*.” MPEP § 2173.02 (emphasis added). In other words, “the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing *clear warning to others as to what constitutes infringement of the patent*.” MPEP § 2173.02 (emphasis added). In the Office Action, the Examiner fails to show why one of ordinary skill in the art would be unable to understand how to avoid infringement of Claim 36. Indeed, the language of Claim 36 -- that “the animated auctioneer is operable to make a first announcement regarding termination of bidding” “if the processor does not receive a subsequent bid within a first pre-determined time period after announcing the current bid” -- provides clear warning as to what constitutes infringement. Because Claim 36 satisfies the requirements of 35 U.S.C. § 112, second paragraph, the rejection is improper. For at least this reason, Applicants respectfully request reconsideration and allowance of Claim 36.

In rejecting Claims 37, 88, and 89, the Examiner employs the same rationale used to reject Claim 36. Accordingly, for at least the reasons stated above with respect to Claim 36, Applicants respectfully request reconsideration and allowance of Claim 37, 88, and 89.

In addition to the foregoing claims, the Examiner rejects Claims 39 and 91 by asserting that the term “substantially” is indefinite. Applicants traverse this rejection and respectfully submit that Claims 39 and 91 satisfy the requirements of 35 U.S.C. § 112, second paragraph. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (a) the content of the particular application disclosure; (b) the teachings of the prior art; and (c) the claim interpretation that would be given by one possessing ordinary skill in the art at the time the invention was made. MPEP § 2173.02. Applicants respectfully submit that those of ordinary skill in the art would understand “substantially equal to the first pre-determined time period” as recited in Claims 39 and 91. Applicants direct the Examiner’s

attention to at least Figure 4 and ¶¶ 71-74 of the Specification, which provide example descriptions of particular embodiments.² Because Claims 39 and 91 comply with the requirements of 35 U.S.C. 112, second paragraph, Applicants respectfully request reconsideration and allowance of these claims.

Claim Rejections - 35 U.S.C. § 103

The Examiner rejects Claims 1, 19-22, 34, 35, 47, 73-76, 86, 87, and 100 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0128952 A1 to Melkomian, et al. (“*Melkomian*”) in view of U.S. Patent No. 6,134,548 issued to Gottsman, et al. (“*Gottsman*”). Applicants traverse this rejection and respectfully request reconsideration and allowance of Claims 1, 19-22, 34, 35, 47, 73-76, 86, 87, and 100.

The cited references fail to support the rejection for at least two reasons. First, the cited references fail to teach, suggest, or disclose a processor operable to “cause the first workstation to display the first animated character as an animated auctioneer operable to announce a current bid for an item” as recited in Claim 1. Second, the *Melkomian-Gottsman* combination is improper because the proposed modification would render *Melkomian* unsatisfactory for its intended purpose.

First, *Melkomian* and *Gottsman* fail to teach, suggest, or disclose each element of Claim 1. In particular, the cited references fail to teach, suggest, or disclose a processor operable to “cause the first workstation to display the first animated character as an animated auctioneer operable to announce a current bid for an item” as recited in Claim 1. In the Office Action, the Examiner relies on *Melkomian* for this aspect of Claim 1. (Office Action; page 4). *Melkomian* discusses “a computer based system” that allows “multiple users to participate on a virtual trading floor environment utilizing the open outcry method, as a direct substitute for an actual trading floor.” (¶¶ 29, 31). The portion of *Melkomian* that is cited in the Office Action describes the open outcry method. In particular, the cited portion states:

As shown in FIGS. 4 and 4a, a virtual exchange environment 1 has traders 2 who congregate in a virtual exchange ring 3 to make markets using the open outcry auction methodology. As in an actual ring, this virtual ring has virtual steps where traders may congregate, though no one can occupy the same space at the same time. All bids and offers are recited in the same manner as is done

² This portion of the Specification is cited merely to illustrate various embodiments and is not intended to limit the pending claims to any particular embodiment.

on a physical exchange floor pit with one exception, market participants do not need to shout their bids and offers. Traders are able to see and hear each other in a virtual form in meetings and off the floor. During trading hours, each trader's body is an iconic representation which can be in the form of an avatar that will display his/her badge number/floor name 5 and their position 6. The position includes whether it is a bid or an offer, quantity, contract month, and the bid/offer price. In order to shorten the order display, bids and offers may be color-coded. Initially, the virtual body of a trader may be a computer depiction or a box, though ultimately animated or video avatars will likely be used, to more closely simulate the "real" world environment in the virtual reality setting.

(*Melkomian*; ¶ 63). Thus, *Melkomian* describes a virtual trading pit in which traders communicate bids and offers with each other. Notably, each trader communicates his or her own bid or offer. (*Melkomian*; ¶ 63). The system in *Melkomian* comprises certain components (e.g., voice recognition software, electronic dataglove, etc.) that enable a trader to use words and hand signals to communicate with other traders. (¶ 59). Thus, according to the "open outcry auction methodology," each trader is able to communicate his or her own bid or offer directly to other traders. As a result, the virtual trading pit in *Melkomian* does not include an "auctioneer" as recited in Claim 1. Indeed, the cited portions of *Melkomian* make no mention of an auctioneer. Because the virtual trading environment in *Melkomian* does not include an auctioneer, *Melkomian* fails to teach, suggest, or disclose a processor operable "cause the first workstation to display the first animated character as an animated *auctioneer*" as recited in Claim 1. (Emphasis added). Because the cited references fail to teach, suggest, or disclose this aspect of Claim 1, the cited references fail to support the rejection. For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of Claim 1.

In rejecting Claim 47, the Examiner employs the same rationale used above with respect to Claim 1. Accordingly, for at least the reasons stated above with respect to Claim 1, Applicants respectfully request reconsideration and allowance of Claim 47.

Second, the *Melkomian-Gottzman* combination is improper because the proposed modification would render *Melkomian* unsatisfactory for its intended purpose. It is well established that if a "proposed modification would render the prior invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." MPEP § 2143.01. *Melkomian* discloses "a computer based system"

that allows “multiple users to participate on a virtual trading floor environment utilizing the open outcry method, as a direct substitute for an actual trading floor.” (*Melkomian*; ¶¶ 29, 31). An intended purpose of *Melkomian* is to simulate the interaction among traders that is typical in an actual trading pit. (¶¶ 41-42). To accomplish this purpose, *Melkomian* displays a virtual trading pit that “has virtual steps where traders may congregate.” (¶ 63). Each actual trader that participates in the system is displayed as a respective “iconic representation” in the virtual trading pit. (¶ 63). *Melkomian* explains that the system comprises certain components (e.g., voice recognition software, electronic dataglove, etc.) that enable a particular trader to use words and hand signals to communicate with other traders. (¶ 59). In particular, *Melkomian* states: “When a trader 2a wishes to take the bid or offer of another trader he/she extends his virtual arm 8 to touch the counter party.” (¶ 64). Thus, an intended purpose of *Melkomian* is to simulate the interaction among traders that is typical in an actual trading pit. (¶¶ 41-42).

In contrast to *Melkomian*, *Gottzman* discloses a system that “facilitates web-based comparison shopping.” (*Gottzman*; abstract). The system in *Gottzman* comprises an interface that displays an agent “that guides a user through the process of interacting with the system.” (Column 38, lines 58-60). The agent in *Gottzman* acts as an intermediary between a consumer and various product suppliers. (Column 32, lines 8-46). When a user is interested in buying a product, an agent compiles and filters information regarding product quality. (Column 36, lines 30-34). On behalf of a particular user, an agent in *Gottzman* is configured to “take care of paying bills for the user, filtering content and emails, and providing a summary view of tasks.” (Column 38, lines 20-25). “From the time a demand for products or services is entered, to the completion of payment,” an agent in *Gottzman* is configured to “conduct research, execute transactions and provide advice.” (Column 32, lines 20-23). Thus, *Gottzman* describes an agent that “manages the relationship between suppliers and consumers and coordinates the suppliers’ fulfillment of consumers’ intentions.” (Column 37, lines 63-65). As a result, the system in *Gottzman* provides an agent that acts as an intermediary between the counter parties in a potential transaction.

In the Office Action, the Examiner proposes modifying *Melkomian* to include the agent described in *Gottzman*. (Office Action; page 4). This modification, however, would render *Melkomian* unsatisfactory for its intended purpose. As explained above, an intended

purpose of *Melkomian* is to simulate the interaction among traders that is typical in an actual trading pit. (*Melkomian*; ¶¶ 41-42). Accordingly, the system in *Melkomian* allows traders to interact directly with each other in a virtual trading pit. (*Melkomian*; ¶ 64). In the Office Action, the Examiner proposes inserting the agent from *Gottzman* into the virtual trading environment of *Melkomian*. (Office Action; page 4). As explained above, the agent in *Gottzman* acts an intermediary between a consumer and various product suppliers. (*Gottzman*; column 32, lines 8-46). As a result of the proposed modification, the traders in *Melkomian* would be forced to conduct transactions through an intermediary agent rather than directly with other traders. By requiring traders to conduct transactions through an intermediary agent rather than directly with other traders, the modified system would no longer resemble a virtual trading pit, where traders communicate and interact directly with each other. (*Melkomian*; ¶¶ 7-10). Consequently, the proposed modification would render *Melkomian* unsatisfactory for its intended purpose of simulating the interaction among traders that is typical in an actual trading pit. (*Melkomian*; ¶¶ 41-42). Because the proposed modification would render *Melkomian* unsatisfactory for its intended purpose, the *Melkomian-Gottzman* combination is improper and the rejection must be withdrawn.

Claims 19-22, 34, 35, 73-76, 86, 87, and 100 depend from independent claims shown above to be allowable. In addition, these claims recite further elements that are not taught, suggested, or disclosed by the cited references. For at least these reasons, Applicants respectfully request reconsideration and allowance of the foregoing claims.

CONCLUSION

For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Antonio Papageorgiou, Attorney for Applicants, at the Examiner's convenience at (212) 829-5407.

Respectfully submitted,

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Date

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